

JOHN P. WORKMAN, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 4:08-CV-1323 CAS  
 )  
 JAIL ADMINISTRATOR, )  
 )  
 Defendant. )

This matter is before the Court on the motion of John P. Workman (registration no. 87420), an inmate at St. Francois County Jail, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the any portion of the filing fee and will not assess an initial partial filing fee under 28 U.S.C. § 1915(b). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C.

§ 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$0.00, and an average monthly balance of \$0.00. As a result, the Court will not assess a partial initial filing fee.

### **28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

## **The Complaint<sup>1</sup>**

Plaintiff brings this action under 42 U.S.C. § 1983. Named as defendants are Dennis Smith (Sergeant, Jail Administrator, St. Francois County Jail), Hardy White (Corporal, St. Francois County Jail), Unknown Milstead (Deputy, St. Francois County Jail), and Unknown Gershonslauter (same). The complaint seeks monetary and injunctive relief.

Plaintiff alleges that from August 4 through August 5, 2008, he was confined to administrative segregation at St. Francois County Jail. Plaintiff claims that he was speaking with defendant Milstead about his confinement in administrative segregation when defendant Gershonslauter approached him and insulted him. Plaintiff says that Gershonslauter became increasingly agitated with plaintiff and told Milstead to “kick [plaintiff’s] bean hatch shut.” Plaintiff alleges that he then exchanged words with GershOnslauter and that plaintiff threatened to kick his door, which was covered in padding. Plaintiff states that Gershonslauter then entered his cell and threw him against the back wall. Plaintiff claims that following this Gershonslauter grabbed and held plaintiff by the neck for a short period of time. Gershonslauter eventually left plaintiff’s cell.

Plaintiff claims that he asked the jail staff for the name of the deputy that allegedly assaulted him but that they refused to provide him with any information regarding the incident.

## **Discussion**

The complaint is silent as to whether defendants are being sued in their official or individual capacities. Where a “complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims.” Egerdahl v.

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<sup>1</sup>For the purposes of this Order, the Court has reviewed the allegations in plaintiff’s complaint and plaintiff’s motion for leave to file an amended complaint, which was filed on September 17, 2008. [Doc. 5] The motion for leave to file an amended complaint will be granted.

Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged constitutional violation. Monell v. Dep't of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of a government entity was responsible for the alleged violations of plaintiff's constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted.

Accordingly,

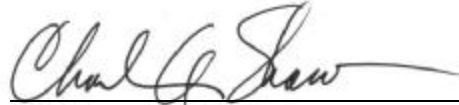
**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis is **GRANTED**. [Doc. 2]

**IT IS FURTHER ORDERED** that plaintiff's motion for leave to file an amended complaint is **GRANTED**. [Doc. 5]

**IT IS FURTHER ORDERED** that plaintiff's motion to appoint counsel is **DENIED** as moot. [Doc. 4]

**IT IS FURTHER ORDERED** that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An Order of Dismissal will accompany this Memorandum and Order.

A handwritten signature in cursive script, appearing to read "Charles A. Shaw", written in dark ink.

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**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 29th day of September, 2008.